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July 23, 2009



PATENT APPLICATION  
Docket No.: 3462.1015-000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Masaaki Oka, Yoshihiko Hamamoto, Norio Iizuka, Hisafumi Okabe and Kenji Hamada

Application No.: 10/552,178

Group: 1642

371(c) Date: July 2, 2007

Examiner: Aeder, Sean E.

Confirmation No.: 6214

For: METHOD OF DEFINING THE DIFFERENTIATION GRADE OF TUMOR

CERTIFICATE OF MAILING OR TRANSMISSION

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Judith K. Sherman

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**REPLY TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the Restriction Requirement dated May 1, 2009, the claims of Group I (Claims 2-12) drawn to methods of defining the differentiation grade of tumor with genes selected by the statistical analyses based on the polynucleotide expression level or pattern of the genes of human tumor tissues obtainable from cancer patients are elected for prosecution. Applicants reserve the right to file a continuing application or take such other appropriate action as deemed necessary to protect the non-elected inventions. Applicants do not hereby abandon or waive any rights in the non-elected inventions.

Responsive to the requirement for an election of species, Applicants respectfully traverse the requirement. The Examiner states that: "Each combination of genes represents a distinct species" (the Office Action at page 3, last paragraph). Currently, there is no claim drawn to a specific combination of genes. Nor is there any claim reciting one or more genes. The Manual

of Patent Examining Procedure (MPEP) specifically states that: "Where two or more species are claimed, a requirement for restriction to a single species may be proper if the species are mutually exclusive" (the MPEP § 806.04(f); emphasis added). Since there is no claim drawn to a gene or a combination of genes, a requirement for an an election of species is improper. Reconsideration and withdrawal of the requirement are respectfully requested.

Respectfully submitted,

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